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Commissioner for Patents Mail Stop AF Examiner: Harry A. Grosso Art Unit: 3652		(571) 273-8300

From : Barry S. Wilson
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MESSAGE:

U.S. Application No: 10/629,322

Our Docket No: 034827-3101

Following are:

- 1) Credit Card Authorization Form (1 pg);
- 2) Notice of Appeal from the Examiner to the board of Patent Appeals and Interferences (2 pgs);
- 3) Pre-appeal Brief Request for Review (4 pgs).

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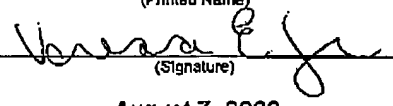
PAGE 1/8 * RCVD AT 8/7/2006 7:39:51 PM [Eastern Daylight Time] * SVR:USPTO-EFXXRF-6/38 * DNIS:2738300 * CSID: * DURATION (mm-ss):02:40

AUG 07 2006

Atty. Dkt. No. 034827-3101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: A. A. Murrer III
Title: TRANSPORT CONTAINER FOR
HAZARDOUS MATERIAL
Appl. No.: 10/629,322
Filing Date: 7/28/2003
Examiner: Harry A. GROSSO
Art Unit: 3652

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the New Pre-Appeal Brief Conference Pilot Program, announced
July 11, 2005, this Pre-Appeal Brief Request is being filed together with a Notice of Appeal.

REMARKS**Rejections under 35 U.S.C. §103**

The Examiner has advanced a number of obviousness rejections, each premised, in
principal part, on the combined teachings of US. Patent Publication No. 2003/0136702 (Redzisz)
and US Patent No. 6,336,342 (Zeddies). Applicants respectfully traverse this underling basis for
lack of motivation to combine. As detailed below, the rejection fails to acknowledge that the
Redzisz design, already containing a rigid inner frame, has no need for an additional rigid inner
frame as taught by Zeddies. Evidence to support Applicants position follows.

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The broadest claim in this case, claim 6, is directed to the soft-sided outer container with a removable, partially collapsible inner frame with rigid walls. The Examiner asserts that “Redzisz discloses a container [citations] with a collapsible soft sided outer shell, a plurality of vertical walls and a bottom integrally formed, an inner layer of watertight material [citations] [and] a secured lid to the side walls [citations].” Office Action page 2. This description of Redzisz, however, is lacking in certain critical details.

As depicted in the figures, Redzisz discloses a collapsible insulated cooler “in the form of a rectangular parallelepiped enclosure.” Redzisz, paragraph [0004], lines 2-3. It is commonly known that a “rectangular parallelepiped,” also known as cuboid, is a closed box composed of three pairs of rectangular faces placed opposite each other and joined at right angles to each other. See, e.g., Wolfram Mathworld, <http://mathworld.wolfram.com/Cuboid.html>. According to Redzisz, the cooler has a bottom side “that is foldable yet maintains its structural integrity and shape when the case is fully opened.” Redzisz, paragraph [0010] (emphasis added).

The nature of the Redzisz cooler that allows for folding is shown in Fig. 11, which depicts the foldable bottom side as being divided into equally sized panels 72 and 74, which “have a shape and configuration defined by semi-rigid or rigid plate members 76 and 78.” Redzisz, paragraph [0034]. The cooler is foldable along a central longitudinal line (seam line 80, Fig. 11), which is the border between panels 72 and 74. The cooler is held in a fully collapsed mode by connectors 104 and 106 attached to straps 100 and 102 on the front, cooperating with connectors 86 and 88 attached to straps 90 and 92 on the back side of the case, respectively. Redzisz, paragraph [0035] and figure 8.

Thus, the rejection fails to acknowledge that the Redzisz cooler is designed to maintain its structural integrity and shape when fully opened. This conflicts with the Examiner’s assertion that Redzisz discloses a container with a collapsible “soft sided” outer shell.” Redzisz, however, makes no reference to a “soft-sided” outer shell. Further, all of the Redzisz figures show that the cooler is rigid in its open configuration. The fact that the Redzisz cooler is not “soft-sided,” but

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rather maintains its integrity when opened, is further evidenced by its use of straps to hold the cooler in the collapsed state.

Thus, the Redzisz cooler is designed with sufficient inner structural rigidity resulting at least in part from an inner frame (see Fig. 11, plates 76 and 78) so that the cooler maintains its shape as a "rectangular parallelepiped"¹ when fully opened. Applicants respectfully submit that this feature of the Redzisz cooler, unacknowledged by the Office Action, defeats the alleged motivation to combine this cooler with the removable and collapsible rigid inner frame of Zeddies. One of ordinary skill would have no motivation to add a second rigid inner frame to a cooler designed with sufficient inner support to maintain its rectangular cooler shape when fully opened. Because motivation to combine the primary and secondary reference is lacking, the pending obviousness rejection of claim 6 and its dependents fails and should be withdrawn.

Claim 16, which is rejected over of Redzisz and Zeddies as described above and further in view of US Patent No. 4,865,899 (Reichert) is patentable on grounds independent from those already discussed. Claim 16 requires the cooler to have an outer fabric that includes polyester. The rejection errors in attempting to combine non-analogous art, i.e., the teachings for an underground and above ground bulk storage tank with that of a small transport container for biohazardous material.

The Examiner argues that that Reichert discloses a container for the transport of hazardous materials constructed from fabric comprising polyester. Office Action, page 4. It is further argued that use of polyester is selected for its high degree of imperviousness to hazardous materials and that such knowledge constitutes a motivation to combine with the teachings of Redzisz and Zeddies. Office Action, page 7, lines 1-5.

Reichert, however, discloses the use of polyester in the "underground and above ground bulk storage tanks" and for the storage of "diesel fuel, gasoline, chemical solvents, and other

¹ A closed box composed of three pairs of rectangular faces placed opposite each other and joined at right angles to each other.

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volatile and/or corrosive materials." Reichert, column 1, line 16, and lines 45-49, respectively. By contrast, the present invention is a container for small scale transportation and storage of biohazard materials, e.g. "medical-related material," "organs or other body parts," or "radioactive material" (see specification, paragraph [0008]). Quite clearly, the Reichert container and the container of claim 16 differ in the scale of capacity, bulk storage tank vs. portable container, as well as in the type of hazardous materials to be handled, environmental hazard vs. biohazard.

Accordingly, Applicants submit that Reichert is non-analogous art because (1) it is not in the field of the present invention, and (2) it is irrelevant to the problem faced by the inventor. Thus, it is inappropriate for the Examiner to combine the teaching of Reichert with that of Redzisz and Zeddies. The Examiner, not applicant, has the initial burden to state a *prima facie* obviousness rejection. MPEP 2142. Accordingly, the rejection of claim 16 as being obvious over Redzisz and Zeddies in view of Reichert fails and should be withdrawn.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance.

Respectfully submitted,

Date August 7, 2006

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